

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8069 OF 2017

Dhiren Shashikant Mehta

... Petitioner

Vs.

Hammana Naik & Ors.

... Respondents

.....

Mr. Chetan Akerkar for the Petitioner.

Mr. Manish Bohra a/w. Mr. Aditya Dwivedi i/b. M/s. A. S. Khan and
Associations for the Respondents.

.....

CORAM: MADHAV J. JAMDAR, J.

DATE : 12th FEBRUARY, 2021.

P. C:-

1. Heard Mr. Chetan Akerkar for the Petitioner and Mr. Manish Bohra for the Respondents.
2. Rule.
3. Rule made returnable forthwith. Learned Counsel for the Respondents waives service.
4. By consent of the parties the Petition is taken up for final hearing.
5. The Petitioner who is original Plaintiff by way of the present Writ Petition filed under Article 227 of the Constitution of India has challenged the legality and validity of the order dated 20th June, 2017 passed by the learned Ad-hoc Judge, City Civil Court, Greater Mumbai in Summons for Judgment No. 306 of 2016 in Summary Suit No. 4707 of 2012.
6. It is the main contention of Mr. Akerkar that the reasons for disposing of Summons for Judgment and for granting unconditional leave

This order is corrected as per speaking to the minutes order dated 09/03/2021.

to the Defendants are totally perverse and contrary to the principles of natural justice. The said reasons are recorded in paragraph 9 of the impugned order. He submitted that voluminous documentary evidence on record is completely ignored by the learned Judge. He has apart from the documents annexed to the Writ Petition produced compilation of documents containing 18 documents which are on record of case before the learned Trial Court. He pointed out copies of Tax Invoices, Delivery Challans, Transport Bills, Purchase Orders, Cheques, Power of Attorney, Letters addressed to Punjab National Bank, declaration dated 07/04/1984 etc. He submitted that all these documents which are on record before the learned Trial Court are completely ignored. He submitted that reasons recorded in the impugned order in para 9 are totally contradictory to what is emerging from these documents. He submitted that the Petitioner is the sole proprietor of the Plaintiff and therefore has authority to institute the suit. He has also relied on Order II Rule 5 and Order XXX Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred as "C.P.C.") to additionally substantiate his claim that the Plaintiff has authority to institute the suit.

7. On the other hand, Mr. Manish Bohra, Learned Advocate appearing on behalf of the Respondents raised following contentions:-

- (i) Writ Petition is not maintainable as there is alternate remedy of filing Civil Revision Application,
- (ii) On the similar facts with respect to different invoices and different cheques ordinary suits were filed by the Respondents and in this particular case summary suit is filed.
- (iii) Suit is filed by the Constituted Attorney, however, power of attorney is not produced and therefore, the suit filed is without any authority.
- (iv) Original suit was filed only against defendant No.1 and thereafter by amendment Defendant Nos. 2 and 3 were impleaded. No reliefs are sought against Defendant Nos. 2 and 3 and no relief can be granted against them.
- (v) Power of Attorney is only for taking action against Defendant No. 3

and therefore there is no power to file suit against Defendant Nos. 1 and 2.
(vi) There is nothing to show that only Plaintiff is legal heir of deceased Shashikant P. Mehta. There is no document to show that Plaintiff is sole proprietor.

(vii) There are five invoices and five cheques issued but it is not clear which cheque has been issued with respect to which particular invoice.

(viii) There is no material on record to show that constituted attorney is aware about the factual position involved in the suit.

(ix) Suit Notice was issued only to the defendant No. 1 and not to Defendant Nos. 2 and 3.

(x) Transport bills which are produced at pages 35 to 39 of compilation are not signed by any of the Defendants.

(xi) As far as five cheques which are the subject matter of the suit are concerned, three were dishonoured as they are “out-dated” and two were dishonoured on the ground that same “exceeds arrangement”.

8. The submissions advanced by Mr.Manish Bohra, Advocate on behalf of the Respondents clearly show that mostly technical defences are raised. On specific query of the Court whether the signatures on the cheques are of the Respondents, Advocate Mr.Manish Bohra fairly admitted that the cheques are issued by Respondent No.3. However, he submitted that the cheques were issued as security for delivery of goods and goods are not delivered. The Learned Advocate of the Respondents also fairly admitted that the documents on which the Petitioner is relying are produced before the Learned Lower Court.

9. Before considering the rival contentions it is necessary to set out paragraph 9 of the impugned order which contains reasons as recorded by the learned Trial Court:-

“9. The plaintiff has not produced any document to show that he is sole proprietor of plaintiff company. The defence raised by the defendants “whether the plaintiff is entitled to file this suit”,

alongwith other defence are reasonable and good defence. The defendants had issued cheques in favour of Rolex Sales Corporation which were dishonoured. It appears that the plaintiff has not filed documents on record to show the fact that Mr. Shashikant P. Mehta was proprietor of company. Then, the plaintiff is proprietor of the company. It appears that suit is filed by Power of Attorney Holder. Copy of Power of Attorney is not on record. In the absence of documents on the part of plaintiff and there is defence raised by the defendants that whether the plaintiff is having an authority to file this suit? It appears that this issue is reasonable and not moon shine therefore, I come to the conclusion that defendants are entitled for unconditional leave to defend the suit. Hence, I proceed to pass the following order:-

ORDER

- i) The Summons for Judgment No. 306 of 2016 stands disposed of.
- ii) The defendants are granted unconditional leave to defend the suit.
- iii) The defendants to file its written statement within four weeks from the date of order.”

10. A persusal of above reasoning shows that the learned Trial Court has given following two main reasons for granting unconditional leave :

- (i) No document is produced to show that the Plaintiff is the sole proprietor of the Plaintiff-Company and before him Mr.Shashikant P. Mehta was the proprietor of the Company.
- (ii) The plaint is filed by the Constituted Attorney, however, the Power of Attorney is not produced on record.

11. A perusal of the plaint shows that in the title, the Plaintiff is described as follows :

“MR.DHIREN S. MEHTA
Aged – 39 years, Occ – Business
Karta of HUF Mehta Family
running a Proprietary Company
namely M/s.Rolex Sales Corporation
Through Constituted Attorney

Aged – 32 years, Occ – Services
An Account of M/s.Rolux Sales
Corporation, 57, 2nd Floor, Sej Plaza
Next to Nutan School, Marve Road,
Malad (West), Mumbai 400 064.”

Mr.Akerkar, the Learned Advocate for the Petitioner pointed out following documents to show that the Plaintiff is the sole proprietor of the Plaintiff-Company and before him his father-Shashikant Mehta was the proprietor.

- (i) Death Certificate dated 14/09/2012 issued by Municipal Corporation of Greater Mumbai showing that Mr.Shashikant Premchand Mehta expired on 7/5/2012.
- (ii) Passport No.H2081936 issued in favour of Petitioner - Dhiren Shashikant Mehta showing name of his father as “Shashikant Premchand Mehta”.
- (iii) Letter dated 20th June, 2012 addressed by the Plaintiff - Mr. Dhiren Shashikant Mehta to the Sales Tax office regarding change of name of Karta due to death of existing Karta. In the said letter it is mentioned that Karta of HUF Mr. Shashikant Premchand Mehta passed away on 7th May, 2012 and Shri Dhiren Shashikant Mehta has been appointed as new Karta of HUF.
- (iv) Two Letters dated 16th May, 2012 addressed by Dhiren Shashikant Mehta to the Branch Manager of Punjab National Bank regarding two different accounts informing about the death of said Shashikant Premchand Mehta, who was karta of HUF and also proprietor of the proprietary firm and further informing that said Dhiren Shashikant Mehta has been appointed as new Karta of HUF.
- (v) Certificate dated 5th April, 2014 issued by the Punjab National Bank stating as follows :

“This is to certify that M/s.Rolux Sales Corporation is maintaining Current Account No.3734002100006499 with us and proprietor in this account is Shri Dhiren Shashikant Mehta as Karta of Dhiren

This order is corrected as per speaking to the minutes order dated 09/03/2021.

Shashikant Mehta HUF.”

Thus, the observations in the impugned order that plaintiff has not produced any documents to show that the Plaintiff is the sole proprietor of the Plaintiff-Company and before him Shashikant Mehta was proprietor of the company is totally perverse. It is also significant to note that most of the above documents are annexed to the plaint. The above documents on record pointing out the said aspects are totally overlooked by the learned Trial Court. The above documents clearly establishes that the Petitioner is the sole proprietor of the Plaintiff-Company and before him his father – Mr.Shashikant P. Mehta was the sole proprietor.

12. As far as observation of the learned Trial Court that suit is filed by power of attorney holder and said power of attorney is not produced on record, it is significant to note that in the compilation of documents, copy of said power of attorney is produced at pages 66 to 71. The Learned Advocate appearing for the Respondents had fairly admitted that the documents on which the Petitioner is relying are produced before the Learned Trial Court. Therefore, there is no substance in the said observation of the Learned Trial Court and same is also perverse.

13. As regards the submission of Mr.Manish Bohra, the Learned Counsel of the Respondents that in this case Summary Suit is filed and on the same facts but with respect to different invoices and different cheques, ordinary Suit is filed, it is to be noted that it is the choice of the Plaintiff to file the ordinary suit or summary suit. The Plaintiff is the *dominus litis*. If a Summary Suit is filed, then Court has to only see whether it falls under Order XXXVII Rule 2 of the Code of Civil Procedure, 1908 and if the conditions mentioned in the said order are satisfied then, there is no impediment in filing Summary Suit. In any case, the aspect that on the same facts but on the basis of different cheques and different invoices ordinary suit is filed cannot be a factor to be taken into consideration while

considering the legality of the impugned order and the merits of the case.

14. Further submission of Mr.Manish Bohra, the Learned Advocate of the Respondents that initially suit was filed only against the Defendant No.1 and the Defendant Nos. 2 and 3 are impleaded by an amendment and no reliefs are sought against these Defendants. In this regard it is to be seen that the invoices are in the name of Respondent No.3 i.e. Defendant No.3 – M/s.Just Textiles Ltd. The cheques in question were issued by the Respondent No. 3. The suit notice is issued to “Mr. Nayak, M/S. Just Textile Limited, Plot No. K-5, MIDC, Industrial Area, Addl. Anand Nagar, Ambarnath, Dist. Thane”. Even the plaint as originally filed against only one Defendant and said Defendant is described as “Mr. Hammana Naik, M/s.Just Textile Limited”. The address given is also that of Respondent No.3-Company. Even after the amendment, the prayers in the suit is that Defendant be ordered and decreed to pay sum of Rs.1,71,229/- together with interest @18 % per annum from the date of filing of the suit till payment or realization. Therefore, there is no substance in the contention that no reliefs are sought against Defendant Nos. 2 and 3.

15. It is also to be noted that cheques are of April-2012 and May-2012 and amendment is granted by order dated 30th March, 2013. Therefore, it is clear that even if the date of amendment is also taken into consideration as the date of institution of the suit then also suit filed on 30/03/2013 on the basis of cheques dated April 2012 and May 2012 is within limitation. The Respondents have not challenged order dated 30/03/2013 granting amendment. Thus, argument that Defendant Nos. 2 and 3 have impleaded by way of an amendment and therefore no reliefs can be granted against Defendant Nos. 2 and 3 is without any substance.

16. As far as the contention that there is nothing to show that Plaintiff has authority to institute the suit as he is not the only heir of Deceased Shashikant P. Mehta, Mr.Akerkar, the Learned Counsel of the Petitioner

rightly relied on declaration dated 7th April, 1984 where his name appears as member of Hindu Undivided Family. The documents to which reference is made in earlier part of this order shows that Mr.Dhiren Shashikant Mehta was appointed as Karta of said Hindu Undivided Family after the death of Deceased Shashikant P. Mehta and said Karta is Proprietor of the Plaintiff. Thus, there is no substance in the said contention.

17. Apart from above, Mr.Akerkar, the Learned Counsel of the Petitioner is right in relying on Order II Rule 5 which reads thus-

“5. Claims by or against executor, administrator or heir.—No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.”

Mr.Akerkar is right in contending that as Mr.Dhiren Shashikant Mehta is part of Hindu Undivided Family, apart from his right as proprietor and Karta of Joint Hindu Family, he is entitled jointly with the deceased Karta and therefore, the suit filed by him is also justified on the touchstone of Order II Rule 5 of the CPC.

18. Mr.Akerkar, the Learned Counsel for the Petitioner has also relied on Order XXX Rule 10 which reads thus :

"10. Suit against person carrying on business in name other than his own. —

Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under

any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly."

The documents on record clearly show that said Hindu Undivided Family was carrying on business under the name as "M/s.Rolux Sales Corporation" and, therefore, it is clear that the Summary Suit filed by the Petitioner is validly filed.

19. To support his claim that the Plaintiff is not the only heir and therefore, has no authority to file suit, the Advocate of the Respondents have relied on judgment dated 25th January, 2010 passed by this Court (Aurangabad Bench) in Criminal Writ Petition No. 842 of 2009 and judgment dated 3rd March, 2011 passed by the Hon'ble Supreme Court in Criminal Appeal No. 643 of 2011. The observations in both these judgments will not be applicable to the present case as the Petitioner has produced extensive documentary evidence showing that the Petitioner has been appointed as sole proprietor. The said documents are discussed in detail in earlier part of this order.

20. As far as contention that transport bills are not signed by the Defendants, it is significant to note that admittedly the cheques are issued by the Defendant No.3 i.e. Respondent No.3. Although the Respondents denies receipt of delivery challans and the tax invoices and according to them the cheques are issued for the purpose of security for the goods to be supplied, it is important to note that as set out herein above, admittedly, cheques are issued by the Respondent No.3, the cheques are exactly of the same amount as that of the Tax Invoices and the amounts mentioned on the Delivery Note are also tallies with the same. The details of respective invoices, delivery notes and cheques are set out hereinbelow for ready reference-

Sr. No.	Date Tax Invoice	Delivery Note / Date	Cheque No.	Date of Cheque	Amount mentionend on Tax Invoices, Delivery Note, Cheques (Rs.)
1.	17/01/2012	4034-17/01/2012	292007	17/04/2012	43,496/-
2.	30/01/2012	4035-30/01/2012	292492	30/04/2012	15,225/-
3.	31/01/2012	4036/31/01/2012	292513	30/04/2012	32,078/-
4.	08/02/2012	4038/08/02/2012	292514	09/05/2012	15,225/-
5.	10/02/2012	4639 (4039)/ 10/02/2012	292516	11/05/2012	6,300/-
				Agreegate Amount	1,12,324

21. Thus, it is clear that the amounts mentioned on the respective Tax invoices, Delivery Notes and cheques tallies with each other. It is also important to note that on the respective Tax Invoices, the Delivery Note numbers are specifically mentioned. It is admitted position that the cheques are issued by the Respondent No.3. The respective Tax Invoice, Delivery Note and Cheques are interlinked. Thus, there is no substance in the contention that the cheques are issued only for security purpose. There is also no substance in the contention that which cheque is issued for which tax invoice is not clear as the respective Tax Invoices mentions about the Delivery Note number and the amounts appearing on the respective cheques tallies with the amounts mentioned in the respective Tax Invoice and Delivery Note. Thus there is no substance in the said contention.

22. Mr.Manish Bohra also submitted that Power of Attorney is only for taking action against the Defendant No.3 – Respondent No.3 and therefore there is no power to file suit against Defendant Nos.1 and 2. The power of attorney is in broad terms and concerning cases related with the Respondent No.3. In any case, the Defendant No.3 is the Company with which the Plaintiff has business transactions and the Defendant No.2 is the

Managing Director of the Defendant No.3. Thus, the contention raised is without any basis.

23. The contention that the Constituted Attorney is not aware about the factual position involved in the suit is incorrect. The Plaintiff has appointed accountant of said M/s.Rolux Sales Corporation as the constituted attorney. In the Affidavit-in-Rejoinder dated 2/12/2016, the constituted attorney - Uday Salian of the Plaintiff has specifically stated that he is personally aware and conversant with the facts of the case.

24. The contention that the said notice was issued only to the Defendant No.1 and not to the Defendant Nos.2 and 3 is incorrect contention. The Suit notice was issued to “Mr.Nayak, M/s.Just Textile Limited” and therefore the contention raised is incorrect. In any case, the suit is summary suit and therefore the same is not filed on the basis of said Notice but as contemplated under Order XXXVII of C.P.C. Thus the said contention is irrelevant.

25. The contention that out of five cheques – three are dishonoured on the ground of “outdated” and two are dishonoured on the ground of “exceeds arrangement” is not relevant. The dates on the cheques are of April 2012 – May 2012, the cheques were dishonoured in July 2012 and August 2012 and the suit was filed on 17/10/2012 and amended on 30/03/2013 and therefore the suit is within limitation. Thus, the reasons for the dishonour of the cheques are totally irrelevant.

26. The Hon’ble Supreme Court in the Judgment reported in (2017) 1 SCC 568 in the matter between IDBI Trusteeship Services Limited V/s. Hubtown Limited has set out certain guidelines to be followed while granting or refusing leave to defend summary suit filed under Order 37 of C.P.C. The relevant portion of paragraph 16 and 17 of the said Judgment is reproduced hereinbelow for ready reference :-

“16..... The position in law now is that the trial Judge is vested with a discretion which has to result in justice being done on the facts of each case. But Justice, like Equality, another cardinal constitutional value, on the one hand, and arbitrariness on the other, are sworn enemies. The discretion that a Judge exercises under Order 37 to refuse leave to defend or to grant conditional or unconditional leave to defend is a discretion akin to Joseph’s multi-coloured coat – a large number of baffling alternatives present themselves. The life of the law not being logic but the experience of the trial Judge, is what comes to the rescue in these cases; but at the same time informed by guidelines or principles that we propose to lay down to obviate exercise of judicial discretion in an arbitrary manner. At one end of the spectrum is unconditional leave to defend, granted in all cases which present a substantial defence. At the other end of the spectrum are frivolous or vexatious defences, leading to refusal of leave to defend. In between these two extremes are various kinds of defences raised which yield conditional leave to defend in most cases. It is these defences that have to be guided by broad principles which are ultimately applied by the trial Judge so that justice is done on the facts of each given case.”

“17. Accordingly, the principles stated in paragraph 8 of Mechelec’s case will now stand superseded, given the amendment of Order 37 R.3, and the binding decision of four judges in Milkhiram’s case, as follows:

17.1. If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit;

17.2.If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the

plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend;

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial judge about the defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security;

17.4. If the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5. If the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith;

17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court."

27. If the factual position on record in this case as discussed hereinabove is examined in the light of the above principles then it is clear

This order is corrected as per speaking to the minutes order dated 09/03/2021.

that the present case falls under paragraph 17.4 of the Judgment of the Hon'ble Supreme Court. Five cheques are issued by the Respondent No.3 and the respective Tax Invoices and Delivery Notes are interlinked with each other and corroborates the transaction. The Respondent No.2 is the Managing Director of the Respondent No.3. The Respondent No.1 is merely purchase officer of the Respondent No.3. Thus, although I am inclined to grant conditional leave to the Respondent Nos.2 and 3, however, the Respondent No.1 is entitled for unconditional leave. The Petitioner's suit claim consists of amounts which are subject matter of dishonoured cheques as also some other amounts. While granting conditional leave to the Respondent Nos.2 and 3, in view of the facts and circumstances of the case and in the interest of justice it is necessary to direct deposit of dishonoured cheques amount aggregating to Rs.1,12,324/- along with interest of 9% p.a. as the transaction is of commercial nature or to give security for that amount.

28. Lastly, I will deal with the submission of Mr.Manish Bohra, the Learned Advocate for the Respondent regarding alternate remedy of revision under section 115 of C.P.C. Normally, such type of objections are dealt with initially, however, the reasoning on merits is also relevant for deciding the said issue and therefore, I am discussing the same at this stage, after considering the merits of the case.

29. It is settled legal position that generally, the Court exercising writ jurisdiction would relegate a party to an alternate remedy, if available, and if it is equally efficacious. However, the said rule is of discretion and not one of compulsion. The Court would exercise discretion in appropriate cases in spite of availability of alternate remedy at least in three contingencies :

- (i) Where the writ petition seeks enforcement of any of the fundamental rights;

- (ii) Where there is failure of principles of natural justice;
- (iii) Where the order or proceedings are wholly without jurisdiction.”

[See (2003) 2 SCC 107 Harbanslal Sahal Vs. Indian Oil Company]

30. It is thus clear that assuming that the revision is maintainable under section 115 of the C.P.C., still it is only an alternate remedy and not prohibition for exercising writ jurisdiction. The discussion regarding merits of the case set out hereinabove clearly shows that the Petitioner has produced voluminous documentary evidence before the Learned Trial Court and inspite of the same the Learned Trial Court has not only completely overlooked the same but incorrectly recorded that the Plaintiff has failed to produce any document and also the Power of Attorney. Therefore, the impugned order is not only perverse but passed without following principles of natural justice. Thus, this case falls under the 2nd contingency as formulated by the Hon’ble Supreme Court.

31. There is one more reason for exercising writ jurisdiction. The impugned order is dated 20/06/2017. The Petitioner has immediately filed the Writ Petition within 7 days i.e. on 27/06/2017. The Petitioner has immediately circulated the matter on 3/07/2017 but till date the same could not be taken up for admission. In these circumstances now to direct the Petitioner to avail alternate remedy will not serve the purpose of justice. The Respondents have not earlier raised contention regarding alternate remedy by filing Affidavit-in-Reply, so that the Petitioner could have considered the same earlier. It is also required to be noted that today also the Advocate of the Respondents allowed the Advocate of the Petitioner to completely argue the matter and thereafter during his arguments, raised the contention regarding alternate remedy. That apart, even if the last point is not taken into consideration, then also there are valid reasons as set out hereinabove for exercising writ jurisdiction.

This order is corrected as per speaking to the minutes order dated 09/03/2021.

32. In view of above, I pass the following order:-

ORDER

(i) Order dated 20th June, 2017 passed by the learned Ad-hoc Judge, City Civil Court, Greater Mumbai in Summons for Judgment No. 306 of 2016 in Summary Suit No. 4707 of 2012 is quashed and set aside.

(ii) The Respondent No.1 is granted unconditional leave to defend the suit. The Respondent No.1 is granted four weeks time to file his written statement.

(iii) The Respondent Nos.2 and 3 are granted conditional leave to defend the suit on the condition that they jointly and/or severally deposit in the City Civil Court, Greater Bombay an amount of Rs.1,12,324/- together with interest @ 9 % per annum from the date of filing of the suit till the deposit of the amount, within a period of three months from today or to give security for the said amount including interest amount within a period of three months from today to the satisfaction of the Learned Judge, City Civil Court, Greater Mumbai dealing with Summary Suit No.4707 of 2012.

(iv) By order dated 20th June, 2017, the Respondents were granted four weeks time to file written statement. However, the Advocate of the Respondents states that written statement is not yet filed. In the event, Respondent Nos.2 and 3 deposits the said amount or gives security for the same as per the directions contained in clause (iii) then they are granted four weeks time to file written statement from the date of deposit of the said amount or giving security for the said amount.

(v) In the event the Respondent Nos.2 and 3 fail to deposit the above amount or fail to give security for the said amount within the time

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prescribed then Summons for Judgment No. 306 of 2016 is allowed against Respondent Nos.2 and 3.

(vi) The Learned Judge, City Civil Court, Greater Mumbai is requested to dispose of Summary Suit No.4707 of 2012 within a period of 18 months from today, uninfluenced by observations made in this order.

(vii) Writ Petition is allowed in the above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)